



adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

55. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

56. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$7,830,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;

1 d. A guarantee to perform the Work by one or more parent corporations or
2 subsidiaries, or by one or more unrelated corporations that have a substantial business
3 relationship with at least one of the Settling Defendants; or

4 e. A demonstration that one or more of the Settling Defendants satisfy the
5 requirements of 40 C.F.R. Part 264.143(f).
6

7 (1) If Settling Defendants elect to establish and maintain financial
8 security by a demonstration pursuant to subparagraph 56.e., Settling Defendants shall not
9 be required to submit the letter required by 40 C.F.R. Part 264.143(f)(3)(i), provided that

10 (a) the chief financial officers of the Settling Defendants who
11 are demonstrating satisfaction with the requirements of 40 C.F.R. Part 264.143(f)
12 pursuant to (c) below certify such Settling Defendant's annual or quarterly reports
13 submitted under section 13(a) or 15(d) of the Securities Exchange Act of 1934,
14 pursuant to the requirements of the Sarbanes-Oxley Act of 2002, Section 302, 15
15 U.S.C. § 7241(a);
16

17 (b) the independent certified public accountant who prepares
18 the documentation required by 40 C.F.R. Part 264.143(f)(3)(ii) and (iii) is
19 registered pursuant to the Sarbanes-Oxley Act of 2002, Section 102, 15 U.S.C.
20 7212; and

21 (c) Settling Defendants submit such documentation, or updated
22 documentation under 40 C.F.R. Part 264.143(f)(5), with respect to at least four (4)
23 separate publicly-traded Settling Defendants annually, unless EPA determines
24 that documentation from a lesser number of Settling Defendants is sufficient to
25 satisfy the requirements of this subparagraph 56.e(1).
26

27 57. If the Settling Defendants seek to demonstrate the ability to complete the Work
28 through a guarantee by a third party pursuant to Paragraph 56.d of this Consent Decree, Settling

*Alternative
means of
certifying
financial
responsibility*

1 Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part
2 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by
3 means of the corporate guarantee pursuant to Paragraph 56.d or by means of the financial test
4 pursuant to 56.e, they shall resubmit the information required by 40 C.F.R. Part 264.143(f)
5 annually, on the anniversary of the Effective Date. In the event that EPA determines at any time
6 that the form of financial assurances provided pursuant to this Section is inadequate to complete
7 the remaining Work, Settling Defendants shall, within 30 days of receipt of notice of EPA's
8 determination, obtain and present to EPA for approval one of the other forms of financial
9 assurance listed in Paragraph 56 of this Consent Decree. Settling Defendants' inability to
10 demonstrate financial ability to complete the remaining Work shall not excuse performance of
11 any activities required under this Consent Decree.

12
13 58. If Settling Defendants can show that the estimated cost to complete the remaining
14 Work has diminished below the amount set forth in Paragraph 56 above after entry of this
15 Consent Decree, Settling Defendants may, on any anniversary date of the Effective Date of this
16 Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial
17 security provided under this Section to the estimated cost of the remaining Work to be
18 performed. Settling Defendants shall submit a proposal for such reduction to EPA, in
19 accordance with the requirements of this Section, and may reduce the amount of the security
20 upon approval by EPA. In determining whether a reduction in the amount of financial security is
21 warranted, EPA shall consider the funds available to the Settling Defendants from the WDI
22 Disbursement Special Account. In the event of a dispute, Settling Defendants may reduce the
23 amount of the security in accordance with the final administrative or judicial decision resolving
24 the dispute.

25 59. If EPA determines that the estimated cost to complete the remaining Work has
26 increased above the amount set forth in Paragraph 56 above after entry of this Consent Decree,
27 EPA may, on any anniversary of the Effective Date of this Consent Decree, or at any other time
28 agreed to by the Parties, increase the amount of the financial security required under this Section

1 to the estimated cost of the remaining Work to be done. Settling Defendants shall increase the
2 amount of the financial security provided under this Section to the increased amount determined
3 by EPA within 45 days of a request by EPA pursuant to this Paragraph. In the event of a dispute,
4 Settling Defendants shall increase the amount of the financial security in accordance with the
5 final administrative or judicial decision resolving the dispute.

6
7 60. Settling Defendants may change the form of financial assurance provided under
8 this Section at any time, upon notice to and approval by EPA, provided that the new form of
9 assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants
10 may change the form of the financial assurance only in accordance with the final administrative
11 or judicial decision resolving the dispute.

12 XV. CERTIFICATION OF COMPLETION

13 61. Completion of the Remedial Action.

14
15 a. Within 90 days after Settling Defendants conclude that the Remedial
16 Action has been fully performed and the Performance Standards have been attained, Settling
17 Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling
18 Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still
19 believe that the Remedial Action has been fully performed and the Performance Standards have
20 been attained, they shall submit a written report requesting certification to EPA for approval
21 pursuant to Section XII (EPA Approval of Plans and Other Submissions) within 30 days of the
22 inspection. In the report, a registered professional engineer and the Settling Defendants' Project
23 Coordinator shall state that the Remedial Action has been completed in full satisfaction of the
24 requirements of this Consent Decree. The written report shall include as-built drawings signed
25 and stamped by a professional engineer. The report shall contain the following statement, signed
26 by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project
27 Coordinator:
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